



August 2, 2013

EX PARTE PRESENTATION

Ms. Marlene H. Dortch Secretary Federal Communications Commission 445 12th Street, SW Washington, DC 20554

Re: Ex Parte Presentation in GN Docket No. 12-268, Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions; WT Docket No. 12-69, Promoting Interoperability in the 700 MHz Commercial Spectrum; WT Docket No. 12-357, Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands; GN Docket No. 13-185, Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, DISH Network Corporation ("DISH") submits this letter summarizing a meeting on Thursday August 1, 2013 with Louis Peraertz, Legal Advisor, Wireless, International, and Public Safety for Chairwoman Clyburn and Sarah Whitesell, Legal Advisor, Media, for Chairwoman Clyburn. Present on behalf of DISH were Jeffrey Blum, Senior Vice President and Deputy General Counsel; Mariam Sorond, Vice President, Technology Development; Alison Minea, Director and Senior Counsel; and Hadass Kogan, Associate Corporate Counsel.

600 MHz BAND PLAN

During the meetings, DISH urged adoption of the broadcast incentive auction band plan originally proposed by the Commission (the "NPRM Band Plan"), with the targeted modifications DISH previously identified (the "Down from 51 without Supplemental Downlink ("SDL")" plan). Claims that the record reflects "industry consensus" are premature at this time; indeed, even parties who claim a "consensus" exists are independently advocating for different

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¹ See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Notice of Proposed Rulemaking*, 27 FCC Rcd. 12357, 12399-402 ¶¶ 119-126 (2012). *See also* Letter from Jeffrey H. Blum, DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (July 17, 2013).

² See DISH Network Corporation Reply Comments, GN Docket No. 12-268 (June 28, 2013).

variants of the "Down from 51" band plan. DISH distributed the attached presentation, which illustrates the differences between the band plans proposed by AT&T and Verizon. DISH explained that the "Down from 51 without SDL" plan presents the best approach to achieve the Commission's goals of maximizing auction participation and ensuring the 600 MHz spectrum is efficiently utilized. As a result, this band plan will maximize the total revenue to be achieved at auction.

Auction Participation: DISH's proposed "Down from 51 without SDL" plan – which includes designating a common paired downlink and uplink block – will prevent spectrum from being designated as SDL, thus ensuring that carriers of all size are motivated to participate in the 600 MHz auction. Because smaller carriers without low band spectrum holdings will not be able to efficiently utilize SDL, the market-based incentives for smaller carriers to bid are lower for SDL spectrum than paired spectrum. Thus, a 600 MHz band plan will best promote participation by all carriers if it ensures evenly paired uplink spectrum will be available in every market.

In addition, DISH's paired approach will give carriers increased certainty and predictability in the global standards setting process, the Third Generation Partnership Project ("3GPP"), thereby increasing the industry's willingness to invest. In order to successfully deploy SDL, carriers must create customized SDL carrier aggregation combinations at 3GPP based on their particular spectrum holdings, which will (i) increase the complexity associated with creating a device ecosystem; and (ii) undermine interoperability in this spectrum. A paired approach facilitates the adoption of a common 3GPP band, resulting in better standards harmonization and economies of scale for handsets and other equipment.

Spectrum Utilization: DISH's "Down from 51 without SDL" plan increases the current and future availability of low-band paired spectrum, an essential resource for new entrants and regional and local operators seeking to grow their business. As DISH has explained, this approach maximizes the amount of usable broadband spectrum; complies with the 2012 Spectrum Act's statutory mandate against excessive guard bands; and leaves open the possibilities for further, future expansion and harmonization.³

Revenue Maximization: Because the "Down from 51 without SDL" plan will lead to increased participation and bring the largest amount of paired and fungible spectrum to market, it provides the Commission with the best path forward to maximize revenue to be gained from the 600 MHz auction.

700 MHZ INTEROPERABILITY

DISH also explained that Lower 700 MHz E Block authorized power levels (50 kW ERP) do not impact the feasibility of device interoperability at issue in the above-referenced proceeding. DISH's previously-filed technical report demonstrates that a PFD-limited high

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³ *Id.* at 1-2.

⁴ See Letter from Jeffrey H. Blum, DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-69 (March 21, 2013) ("March 21 DISH Letter"); Letter from Jeffrey H. Blum, DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-69 (May 29, 2013)

power broadcast transmission in the Lower E Block has similar impact on adjacent block operations as a lower power alternative.⁵ In addition, any parties requesting modification of the Lower E Block technical rules have provided no evidence that the existing rules are insufficient to protect adjacent operations. As DISH previously explained, AT&T's recent assertions that the DISH analysis is flawed⁶ are incorrect and misleading.⁷ AT&T has provided no independent analysis or field measurements related to the Lower E Block to support its claimed "flaws" with DISH's E Block analysis.⁸ The analytical and empirical evidence provided by DISH and a number of Lower A Block licensees all demonstrate that to the extent the Commission adopts 700 MHz interoperability rules, it can do so without changing the Lower 700 MHz E Block authorized power levels. There is thus no technical justification to change authorized power levels in the Lower E Block in this proceeding, because these levels have no impact on the Commission's goal of promoting interoperability in the Lower 700 MHz band.

Given the lack of record support, there is also no legal basis to change the power levels authorized for the 700 MHz E Block. DISH acquired the E Block spectrum at auction in 2008 for nearly \$712 million based on the technical rules in place at the time of the auction. DISH has spent years studying and testing a broadcast video service in the E Block and has already filed notifications and commenced operations at 13 sites throughout the country, with active work ongoing to identify and commence operations at additional sites. Any changes to the service rules for the E Block post-auction will upset DISH's legitimate, investment-backed expectations for use of this spectrum, jeopardize DISH's investment and business plans, and may be considered an unauthorized partial revocation of DISH's license.

("May 29 DISH Letter"); Letter from Mariam Sorond, DISH Network Corporation, to Marlene H. Dortch, FCC, WT Docket No. 12-69 (June 25, 2013) ("June 25 DISH Letter"); Letter from Jeffrey H. Blum, DISH Network Corporation, to Marlene H. Dortch, FCC, WT Docket No. 12-69 (July 15, 2013) ("July 15 DISH Letter").

⁵ See May 29 DISH Letter at Attachment.

⁶ See Letter from Joseph P. Marx, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-69 (June 26, 2013).

⁷ See July 15 DISH Letter.

⁸ *Id*.

⁹ See March 21 DISH Letter; May 29 DISH Letter; June 25 DISH Letter. See also DISH Network Corporation Comments, WT Docket No. 12-69, at 8-9 (June 1, 2012).

¹⁰ DISH holds 168 licenses in the Lower 700 MHz E Block (722-728 MHz) through its subsidiary, Manifest Wireless L.L.C. Together, DISH's E Block licenses form a nationwide footprint, except for five of the largest U.S. metropolitan areas (New York, Boston, Philadelphia, Los Angeles, and San Francisco).

¹¹ See March 21 DISH Letter; June 25 DISH Letter.

¹² See DISH Network Corporation Comments, WT Docket No. 12-69, at 8-9 (June 1, 2012); June 25 DISH Letter.

SPECTRUM IN THE AUCTION PIPELINE

DISH also discussed other spectrum proceedings pending at the Commission. DISH explained that it supports taking a holistic approach to the upcoming spectrum auctions – including the auction of the H Block, 600 MHz spectrum, and AWS-3 bands – and hopes to work with the Commission to determine the best ways to optimize this spectrum, as well as AWS-4. DISH shares the Commission's goals of freeing up as much spectrum for auction as possible, maximizing revenue for FirstNet and the United States Treasury, and ensuring spectrum is efficiently utilized. However, given the current regulatory requirements for H Block and AWS-4, we conveyed that it is unlikely DISH will choose to meaningfully participate in the upcoming auction of the H Block. In addition, DISH explained that the Commission's recent proposal to designate the lower J Block (2020-2025 MHz) for uplink use would make future J Block operations vulnerable to significant interference from adjacent Federal government and Broadcast Auxiliary Service ("BAS") users above 2025 MHz. ¹³

Respectfully submitted,

/s/ Jeffrey H. Blum Jeffrey H. Blum

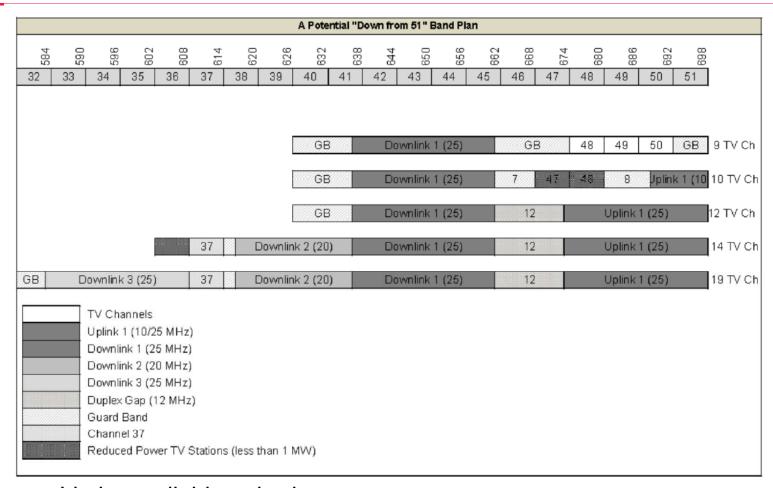
cc: Louis Peraertz Sarah Whitesell

Attachment

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¹³ See Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, *Notice of Proposed Rulemaking*, GN Docket No. 13-185, FCC 13-102, ¶ 35 (rel. July 23, 2013). See also Letter from Jeffrey H. Blum, DISH Network, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 12-70 and 04-356; ET Docket No. 10-142, Attachment: S Band Interference from 2025-2110 MHz (Sept. 17, 2012).

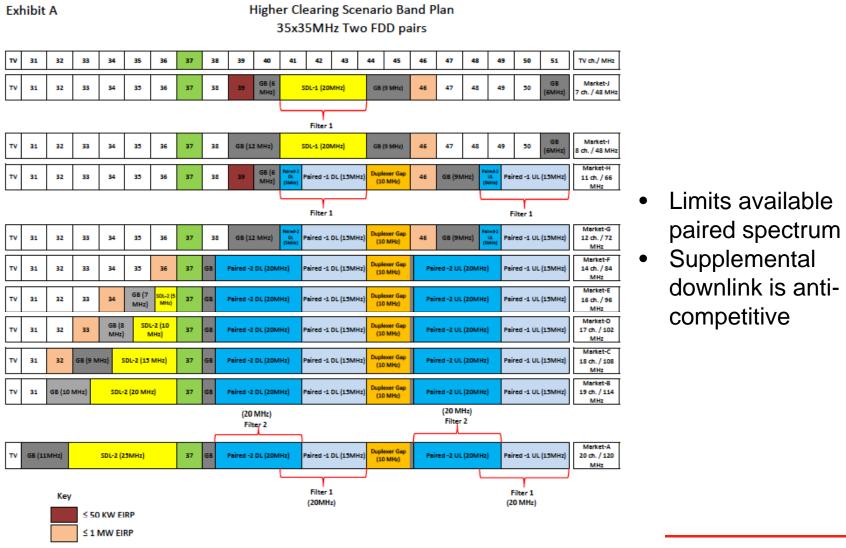
AT&T's Proposal¹



- Limits available paired spectrum
- Supplemental downlink is anti-competitive



Verizon Wireless' Proposal²





DISH's Proposed "Down from 51 without Supplemental Downlink" Plan

